

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: SPECIAL EDUCATION STUDENT
EXEMPTION FROM MINIMUM WAGE**

NUMBER: ES.A.4

**CHAPTER: RCW 49.46.060
WAC 296-128**

REPLACES: ES-014

ISSUED: 1/2/2002

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The department has held that special education assignments, including a very short period of non-paid workstation experience, would not be considered employment provided all the following criteria are met:

1. The student is a vocational rehabilitation client who has been tested and determined to be physically, mentally or emotionally handicapped or has been certified by the local school district's special education director as having a disabling condition, and who is unable to function in a regular school or vocational program; and
2. The student does not take the place of a worker; and
3. There is a written agreement, signed by the school and vocational rehabilitation officer, describing the necessity for the work experience training without pay and listing the type of work training involved; or where a vocational rehabilitation officer is not available, a copy of the student's individualized education plan showing specific, measurable, short-term objectives related to the work experience is on record.
4. The phrase "derives no appreciable benefit from the duties performed by the student," means that students participating on a non-paid basis will not perform any tasks that could or would normally be performed by regular employees of the employer. The basis for this is that if a duty could or would normally be performed by a regular employee, then the employer does derive a benefit if such work is performed by a student, thereby freeing the regular employee for other work.